

BILL SUMMARY

An Act Promoting Affordable Housing and Community Planning in the Commonwealth

SUMMARY:

Under current law and this bill, a community that has less than 10% of its total year round housing as affordable is subject to a comprehensive permit application process. This bill specifies how and when developers of housing may apply to a zoning board of appeal in a city or town for a comprehensive permit application to develop housing. Any housing built under this single permit application must contain housing that is affordable to households earning at or below 80% of median income. The department of housing and community development must adopt regulations to implement the changes set forth in this bill.

HOW CITIES AND TOWNS CAN COUNT UNITS TO REACH THEIR 10% AFFORDABLE HOUSING:

DCHD shall maintain a subsidized housing inventory of every community's affordable housing units. This inventory must be updated every 2 years. New to chapter 40B is Section 6 of the bill that describes what housing units count towards the community's 10% threshold of affordable housing:

1. Low or moderate income housing units created under a federal, state or local program subsidizing affordable housing.
2. Rental housing developments with either 25% of the units as affordable to households at or below 80% of median income or 20% of the units affordable to households at or below 50% of median income will have 100% of the units as affordable toward the community's subsidized housing inventory.
3. Affordable home ownership units in a development will be counted at 2 times the number of actual units that are affordable.
4. Affordable community housing built under the state's community preservation act.
5. Affordable accessory apartment units (also known as in-law

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- apartments).
 6. DMH and DMR group home units (each unit or bed serving 1 client is counted).
 7. Affordable urban center housing tax increment financing housing units.
 8. Expiring Use Units in buildings that have pre-paid mortgages or lost units, pursuant to guidelines issued by DHCD.

DHCD shall make planning and housing development resources available to assist cities and towns in reaching their affordable housing thresholds.

HOW HOUSING DEVELOPERS CAN APPLY FOR A COMPREHENSIVE PERMIT APPLICATION:

Section 6 of the bill sets out the requirements and procedures for comprehensive permit applications. Before a housing developer's application for a comprehensive housing permit application can be approved, the developer must be the type of developer who can make such application; the development project must be fundable by a subsidizing agency under a low or moderate-income subsidy program; and the developer must comply with pre-application procedures. Additionally, the proposed housing development itself must fulfill certain requirements.

PRE-APPLICATION PROCEDURES:

To be eligible to submit a comprehensive permit application to a local zoning board of appeals a developer must:

1. be a public agency (e.g. local housing authority), a non-profit (e.g. a community development corporation), or a limited dividend corporation;
2. the development must be fundable under a low and moderate income housing subsidy program;
3. control the site where the development will be built; and
4. the proposed development must contain at least 25% of its housing units as affordable to low or moderate income households (may have 20% of its units as affordable if serving households at or below 50% of the area median).

NOTICE REQUIREMENTS

Within 10 days of filing an application for a determination of project eligibility with a subsidizing agency the applicant must serve written notice of the application upon:

1. the director of DHCD;
2. the members of the General Court representing the city or town where the project is located;
3. the chief executive officer of the city or town;
4. local officials of the city or town including:
 - a. planning board
 - b. board of health
 - c. conservation commission
 - d. water and sewer
 - e. fire and police

INFORMAL PUBLIC MEETING TO DISCUSS PROPOSED PROJECT

Within 30 days after the notice of the proposed development the city or town may hold a public meeting to informally discuss the proposal. Following such meeting the city or town (and the regional planning district for that area) may issue written comments about the proposal to the subsidizing agency.

DETERMINATION OF PROJECT ELIGIBILITY:

Before a developer of chapter 40B housing can apply for a comprehensive permit from a zoning board of appeals, the developer must receive a determination of project eligibility from a subsidizing agency. This bill sets forth the standards for a subsidizing agency's review prior to issuing a determination of project eligibility to include:

1. the specific details of the site to be developed including how many housing units are proposed, the percentage of units for low or moderate income households and the duration of the use restrictions for such affordability;
2. that the project is generally eligible under the requirements of the housing program under which it is being developed.
3. that the subsidizing agency has reviewed the information submitted by the applicant and done an on-site inspection of the site to be developed;

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4. that the proposed design and density is appropriate for the site taking into account surrounding land uses, proximity to transportation, services, public utilities and design to minimize land use impacts;
 5. that the project is financially feasible;
 6. that the subsidizing agency must consider local concerns such as the projects overall size and density; environmental impact; consistency with smart growth; the impact of other pending applications for housing development and impact on historical and natural resources.

In the case of a project being funded by a non-governmental entity (such as a member bank of the Federal Home Loan Bank of Boston's New England Fund), DHCD shall authorize a public or quasi-public entity (e.g. MassHousing) to make the determination of project eligibility.

WHEN A LOCAL ZONING BOARD OF APPEALS MAY AS OF RIGHT DENY A COMPREHENSIVE PERMIT APPLICATION:

After a 40B housing developer receives a determination of project eligibility the developer may file for a comprehensive permit application with a city or town's zoning board of appeals. This bill amends current law to enumerate ways in which a city or town may deny a comprehensive permit application as a matter of law. The revision retains the requirement that such applications must be consistent with local needs and sets out additional conditions under which a city or town may deny a comprehensive permit:

1. when low or moderate income housing in the community exceeds 10% of the city or town's year round housing stock. Previously, Chapter 40B provided for several other conditions in which a town could deny a comprehensive permit. These provisions have been removed under this bill as explained below.
2. when the development is too large for the city or town in which it is proposed according to the following:
 - a. 7,500 or more housing units then the community can deny a development with more than 300 housing units or 2% of the housing units in the community (whichever is greater);
 - b. 5,000 to 7,500 housing units, can deny a development of more than 250 units;

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- c. 2,500 to 5,000 housing units, can deny a development of more than 200 units; and
 - d. less than 2,500 units, can deny a development of more than 150 units.
 3. Recent progress toward achieving the city or town's affordable housing threshold of 10% by creating 2 percent of eligible low or moderate income housing (this allows a community a 1 year grace period from comprehensive permit applications);
 4. When a developer has made a previous non-40B application for the same land that is now the subject of a 40B comprehensive permit application, the city or town may deny the application if 12 months have not gone by since the prior non-40B application. This prevents developers from using 40B as a threat to force a change in zoning, a variance or a special permit.
 5. A city or town has an approved affordable housing plan and has permitted the construction of low or moderate income housing. Depending on how much low or moderate income housing is permitted will determine the length of time during which the community may deny comprehensive permit applications;
 - a. $\frac{1}{2}\%$ of total year round housing units = 1 year off;
 - b. 1% of total year round housing units = 2 years off; and
 - c. $1\frac{1}{2}\%$ of total year round housing units = 3 years off.
 6. A city or town that has finally approved 3 or more comprehensive permits of 20 units or more apiece in the preceding 12 months may deny the next application for a comprehensive permit.

PLANNING PROCESS:

This bill also provides incentives for communities to plan for affordable housing and make efforts to implement such plans. First, in Section 9 of the bill, if a community denies an application for a comprehensive permit, the housing appeals committee must consider evidence of the community's plan and the results of the efforts to implement such plans in order to determine whether the denial should be upheld. Such planning has already been used successfully in several communities to deny inappropriate comprehensive permit applications. Second, Section 4 of the bill provides that if a town has an approved affordable housing plan to increase the number of low or moderate income housing units in the community it may deny comprehensive housing permit applications for a certain period of time depending on the progress made toward such plan.

The plan however must include the following elements:

1. A housing needs assessment for the city or town;
2. A plan for a mix of types of housing;
3. A strategy to achieve its goal based on the needs assessment;
4. the types of development the city or town prefers that are consistent with smart growth principles such as cluster housing, transit oriented development, and others;
5. a description of use restrictions to ensure the housing remains affordable;
6. identify zoning districts which permit residential use;
7. identify sites or characteristics of sites that the community will encourage the filing of comprehensive permit applications; and
8. city or town owned parcels, if any for development of affordable housing.

The plan is then submitted to DHCD for approval. DHCD must also certify whether or not the community is in compliance with the plan.

EMPHASIS ON SMART GROWTH:

This bill contains several provisions that provide that communities, developers and subsidizing agencies take into account principles of smart growth in the development of housing. The bill eliminates the previous land area exemption which has the effect of encouraging sprawl. It requires that even before filing an application for a comprehensive permit that the agency which will finance or subsidize the proposal take into account and make findings that the proposed design and density is appropriate for the site and certain smart growth impacts such as surrounding land uses, proximity to transportation, services, public utilities and design to minimize land use have been taken into account.

Cities and towns are provided with improved input into to the site approval process. The subsidizing agency must take into account local concerns such as overall density and size; environmental impact; consistency with principles of smart growth; impact on historical and natural resources; and the impact of other pending applications for housing development in the town where the project is proposed.

ADDITIONAL PROVISIONS:

COMMUNITIES WITH CONTIGUOUS BORDERS:

Section 6 of the bill adds a new Section 20B to provide that communities which share a border with a community that has a pending comprehensive permit application may enter into an agreement regarding shared infrastructure and services costs. This section would allow communities to have joint applications and hearings for a comprehensive permit application. Additionally, communities could share in the counting of housing units toward their affordable housing threshold of 10%.

TECHNICAL ASSISTANCE TO LOCAL COMMUNITIES:

Section 7 adds new Section 20C to provide communities with technical assistance regarding comprehensive permit applications from the Massachusetts Housing Partnership fund board. The fee for this service will be paid for by the applicant for the comprehensive permit.

Section 8 adds new Section 20D to require DHCD to promulgate regulations and establish programs to implement chapter 40B, including making available planning and housing development information and resources to assist cities and towns.

REGIONAL HOUSING PILOT PROGRAM:

Section 10 creates a pilot program under which DHCD may establish 3 housing regions to address regional housing needs in contiguous communities which currently do not meet the 10% affordable housing threshold. This program will sunset in 2006.